

Editorial

The European Union Directive on the application of patients' rights in cross-border healthcare

Over the last decade, the European Court of Justice (ECJ) has confirmed the responsibilities of European Union (EU) Member States in the health care sector. It has also underlined the right for patient mobility outside national borders in order to access health care services in other countries.

Furthermore, the ECJ, in the leading case *Leichtle* has stated the following:

- prior authorisation must be regarded as a hindrance that prevents patient mobility to other countries;
- there is no need for a scientific test that proves that thermal spa treatment is better at home rather than abroad;
- the thermal spa centres and establishments abroad must be recognised by the national health service concerned and appropriately registered within it.

The above-mentioned statements of the ECJ have been integrated into the EU Directive no. 24/2011/CE of 9th March 2011 concerning the application of patients' rights in cross-border healthcare. This Directive represents a very important and strategic piece of European legislation. It is especially important because it has actually replaced the prior authorisation procedures that were previously required to allow patients to go abroad to access health care services. Therefore, in this respect, the Directive has contributed to improving the level of freedom of choice for the European citizens.

Moreover, the strategic importance of the Directive must be recognised since it could potentially develop towards allowing EU citizens to move cross-border confident that the costs that they incur for services from another health care system are to be paid by their State of affiliation.

The Directive strikes a balance between the citizens' rights to move freely across borders to access health care services and the need for the Member States to control their health budgets. Accordingly, finance restrictions *versus* freedom of choice seems to be the battle that nowadays health care systems are called upon to engage in. Does this mean then that the patient's right to access health care services depends on the budgets of the Member States? Are we facing a time in which the principle that defines many legal systems, especially those in Europe, according to which *everyone is entitled to access health care services regardless of wealth* is about to give way to financial sustain-

ability? On reading the recent decision taken by the Indian Supreme Court on 1st April 2013 regarding Novartis International AG, one could presume that *health comes first*. Indeed, the Indian judges have stated that medicines are to help as many people as possible, and hence patents are not to be authorised when a *non-patent* pharmaceutical product can be *invented* anyhow. This is not actually the appropriate place whereby to deepen the legal implications of the denial of patents in the pharmaceutical sector. It is, however, possible to make some short comments on the decision. Firstly, the Indian judges have supported the idea that the right to health, as, for example, it is effectively described in the Italian Constitution of 1948, is a right to which any person should be entitled. Accordingly, public health should be separated from people's specific economic and financial conditions. Secondly, the decision held by the Indian Supreme Court seems to open up another issue, namely, the investments that the health care system needs. In other words, translating the decision into the European context, we might point out that the European Union at large and the Member States individually are called upon to establish their priorities for action. The health care systems are often regarded only as expensive pieces of the modern welfare states that need to be reduced in order to ensure financial sustainability. There is evidence that reducing costs and making savings should be one of the goals of health care sector. But these should also recognise the top priority that is to be identified in the protection of the citizen's right to access health care services. We would like to think of a health care system as one in which financial resources and priorities of actions are bound together. We would not like to think of a health care system in which financial resources influence the decision-making process or policy making.

In other words, there should be still some room for health care systems to shift their focus from the assumption that, first and foremost, it is fundamental to protect citizens' welfare and wellbeing.

In this respect, particular attention should be devoted to the legal and organisational systems provided for the health care services. Indeed, there is a direct link between the citizen's right to access health care services and the way these services are provided. And this is especially clear in those legal systems in which the central government has long ceased to play the pivotal role that it had previously had.

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